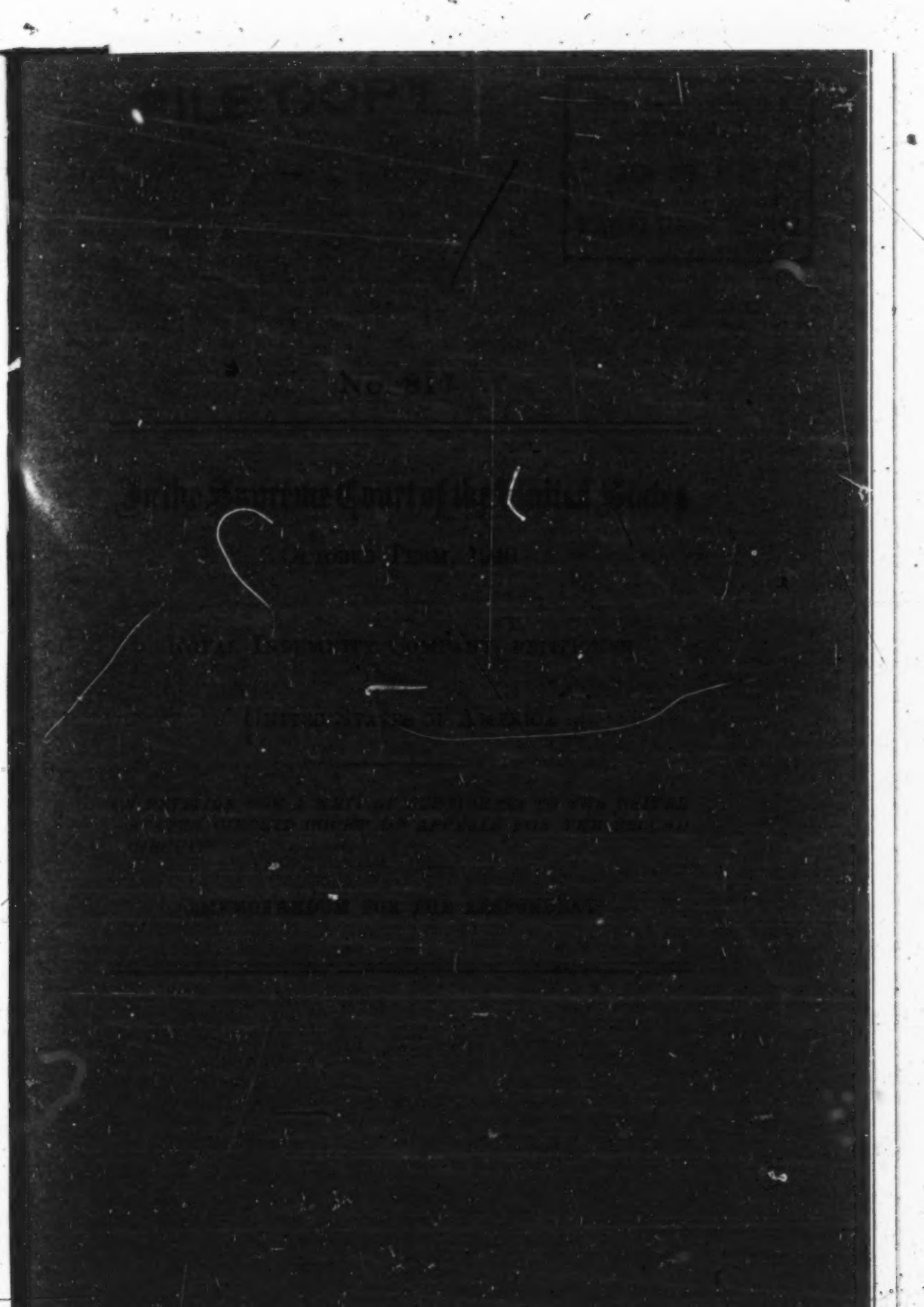
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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 817

ROYAL INDEMNITY COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The Government does not oppose the issuance of a writ in this case, but suggests that, if granted, it be limited to the first question presented in the petition.

1. The first question presented is whether a Collector of Internal Revenue has implied authority to release a surety bond. The court below answered this question in the negative, basing its decision upon the principle that subordinate officials cannot surrender rights of the United States without express statutory or constitutional authority. Al-

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though we believe this decision to be plainly correct, it is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Heinemann Chemical Co.* v. *United States,* 92 F. (2d) 302, with which the court below stated it was unable to agree.

2. The other questions presented in the petition relate to the action of the court below in awarding to the United States interest at six per cent upon its claim against the surety, pursuant to the provisions of New York law. The decision of the court below in this respect is not in conflict with any decision of this Court or of any other Circuit Court of Appeals, and is fully supported by the authorities cited in the opinion.

United States v. *Wagner,* 93 F. (2d) 77 (C. C. A. 9th), upon which the petitioner relies, is not opposed. That case involved the interpretation of a provision of a statutory surety bond, one of the conditions of which was that the principal obligor would pay "the deficiency as finally determined, together with any interest * * * provided for by law." The court held that "The law by which such interest is 'provided for' is the law of the United States". That holding is, of course, in no way opposed to the decision below that a surety who is adjudged liable for breach of contract must pay interest, as provided by state law, from the date of the breach to the date of judgment.

The authorities cited by the petitioner (Pet. 7, 13) to the effect that the allowance of legal interest may, in certain circumstances, be refused where the plaintiff is guilty of laches are all plainly distinguishable on their facts from the situation disclosed by the present record.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

MARCH 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941